



DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO-P-2022-0027]

Expanding Admission Criteria for Registration to Practice in Patent Cases Before the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) previously published a notice requesting comments on the scientific and technical requirements to practice in patent matters before the USPTO. Specifically, the Office sought input on whether it should revise the scientific and technical criteria for admission to practice in patent matters to require the USPTO to periodically review certain applicant degrees on a predetermined timeframe, make certain modifications to the accreditation requirement for computer science degrees, and add clarifying instructions to the General Requirements Bulletin for Admission to the Examination for Registration to Practice in Patent Cases before the United States Patent and Trademark Office (GRB) for limited recognition applicants. The USPTO has considered the comments and, based on the support for the proposals, is implementing updates to the GRB. Expanding the admission criteria of the patent bar would encourage broader participation and keep up with the ever-evolving technology and related teachings that qualify someone to practice before the USPTO.

DATES: The new version of the GRB incorporating the proposed updates will be published and be applicable as of [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Will Covey, Director for the Office of Enrollment and Discipline (OED), at 571-272-4097 or oed@uspto.gov.

SUPPLEMENTARY INFORMATION:

Summary

On October 18, 2022, the Office published a request for comments on four proposals on the scientific and technical requirements to practice in patent matters before the USPTO. The first proposal was to add commonly accepted Category B degrees to Category A on a predetermined timeframe, namely every three years. The Office received 10 comments responsive to this proposal. The second proposal was to remove the requirement that computer science degrees be accredited by the Accreditation Board for Engineering and Technology (ABET) in order to be considered under Category A, and instead, to propose that the USPTO would accept all Bachelor of Science in computer science degrees from accredited colleges or universities under Category A. The Office received 14 comments responsive to this proposal. The third proposal was to clarify the instructions for applicants who are applying for limited recognition. The Office received five comments responsive to this proposal. A majority of the comments were supportive of the suggested changes regarding these three proposals. The fourth proposal, whether to implement a design patent practitioner bar, and, if so, how to do so, will be addressed in a separate notice.

This notice provides information related to the implementation of the first three proposals. Based on the USPTO's evaluation and comments received, the USPTO is changing the criteria to: add common Category B degrees to Category A on a predetermined timeframe, namely every three years, and remove the requirement that in order to qualify under Category A, Bachelor of Science in computer science degrees must be accredited by the Computer Science Accreditation Commission of the Computing Sciences Accreditation Board, or by the Computing Accreditation Commission of the

ABET, on or before the date the degree was awarded. Instead, all Bachelor of Science degrees in computer science from an accredited university or college will be accepted under Category A. Additionally, the instructions to limited recognition applicants to apply for recognition will be clarified to aid applicants in the application process.

Background

The Director of the USPTO is given statutory authority to require a showing by patent practitioners that they possess “the necessary qualifications to render applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.” 35 U.S.C. 2(b)(2)(D). The courts have determined that the USPTO Director bears primary responsibility for protecting the public from unqualified practitioners.

Pursuant to that responsibility, USPTO regulations provide that registration to practice in patent matters before the USPTO requires a practitioner to, *inter alia*, demonstrate possession of scientific and technical qualifications.¹ The role of patent practitioners with scientific and technical backgrounds in providing full and clear patent specifications and claims has long been acknowledged. The USPTO publishes the GRB, which sets forth guidance for establishing possession of scientific and technical qualifications. The GRB also provides applicants instructions on how to apply to become a patent practitioner. The GRB is available at www.uspto.gov/sites/default/files/documents/OED_GRB.pdf.

The GRB lists three categories of scientific and technical qualifications that typically make one eligible for admission to the registration examination in order to

¹ Legal representation before Federal agencies is generally governed by the provisions of 5 U.S.C. 500. That statute, however, provides a specific exception for representation in patent matters before the USPTO. 5 U.S.C. 500(e). *See* 35 U.S.C. 2(b)(2)(D) (formerly 35 U.S.C. 31).

practice before the Office in all patent matters: (1) Category A for specified bachelor's, master's, and doctorate of philosophy degrees; (2) Category B for other degrees with technical and scientific training; and (3) Category C for individuals who rely on practical engineering or scientific experience by demonstrating that they have passed the Fundamentals of Engineering test. If a candidate for registration does not qualify under any of the categories listed in the GRB, the USPTO will conduct an independent review for compliance with the scientific and technical qualifications pursuant to 37 CFR 11.7(a)(2)(ii).

The USPTO has evaluated, and continues to evaluate, the list of typically qualifying training set forth in the GRB. These evaluations seek to clarify guidance on what will satisfy the scientific and technical qualifications, to identify possible areas of improved administrative efficiency, and to clarify instructions where warranted. To that end, the USPTO published a notice requesting comments on three proposed updates to the GRB, namely, to add commonly accepted Category B degrees to Category A every three years; to remove the requirement that computer science degrees be accredited by ABET in order to be considered under Category A, and instead accept all Bachelor of Science in computer science degrees from accredited colleges or universities; and to clarify the instructions for applicants who are applying for limited recognition. *See* Request for Comments on Expanding Admission Criteria for Registration to Practice in Patent Cases Before the United States Patent and Trademark Office, 87 FR 63044 (October 18, 2022).

The USPTO received comments from intellectual property organizations, industry, individual patent practitioners, and the general public. The USPTO acknowledges and appreciates the many comments that were submitted from the intellectual property community. The comments are available at www.regulations.gov/docket/PTO-P-2022-0027/comments. The USPTO has considered

the comments, including those that raised concerns or provided suggestions. The USPTO is implementing the proposals as stated in the request for comments, and as explained below. Additional suggestions beyond the scope of the request for comments and the questions posed therein were provided within many of the comments. The USPTO appreciates the suggestions and may address them in the future, once further evaluation and data is garnered.

This notice merely describes agency policy and procedures and does not involve substantive rulemaking. While the criteria for admission to practice in patent matters is generally described in 37 CFR 11.7, the rule does not set forth the specific scientific and technical criteria for admission.

Update 1: Review Commonly Accepted Category B Degrees and, Where Warranted, Add Them to Category A Every Three Years

In early 2020, the Office undertook a review of Category B applications to identify bachelor's degrees that are routinely accepted as demonstrating the requisite scientific and technical qualifications. In September 2021, the Office added 14 of these degrees, which were previously evaluated under the criteria listed in Category B, to Category A. The review of degrees is ongoing and is currently based on data from those applying for the registration exam. Category A is not an exhaustive list of all degrees that would qualify, and the USPTO's practice is to accept degrees when the accompanying transcript demonstrates equivalence to a Category A degree (for example, molecular cell biology may be equivalent to biology).² A determination of equivalency does not indicate that the degrees are the same. Rather, it is an evaluation that the degrees have the same or

² See OED Frequently Asked Questions (FAQs), available at www.uspto.gov/learning-and-resources/patent-and-trademark-practitioners/oed-frequently-asked-questions-faqs.

similar scientific and technical rigor required to provide patent applicants valuable service. Currently, the average processing time for applicants with Category A degrees is seven calendar days. The average processing time for applicants with Category B degrees is 10-14 calendar days.

Given the fast pace at which technology and related teachings evolve, the USPTO will review commonly accepted Category B degrees and add them to Category A on a three-year timeframe, beginning from the publication date of this notice. These reviews will clarify guidance on what would satisfy the scientific and technical qualifications, improve administrative efficiency, and simplify the application process. Conducting such reviews on a three-year cycle will provide adequate time for the USPTO to gather, review, and analyze the degree data from a sufficient number of applicants for the registration exam. One commenter suggested that such reviews rely on the technical and analytic ability required by the particular degree. Once the potential degrees that may be moved from Category B to Category A are ascertained based on applicant data, the degrees will be assessed to determine whether they present sufficient technical and scientific qualifications necessary to render patent applicants valuable service. *See Premysler v. Lehman*, 71 F.3d 387, 389 (Fed. Cir. 1995). Other commenters suggested specific degrees for current incorporation into Category A. The degrees suggested either are not ones that are currently awarded by a great majority of institutions (e.g., artificial intelligence), are not ones that applicants actually have or that a lot of applicants have (e.g., artificial intelligence and cheminformatics), or are ones that would already be evaluated as equivalent to a current Category A degree (e.g., cell biology as equivalent to biology). As stated in this notice, the USPTO will continue to collect and analyze data on the degrees on a three-year cycle.

Lastly, a number of commenters suggested making applicants' degrees publicly available. The USPTO is not permitted to blanketly reveal such information, as stated in

the Privacy Act Statement that accompanies the application in the GRB, and there is no current infrastructure to do so.

Update 2: Accept Bachelor of Science Degrees in Computer Science from Accredited Colleges and Universities under Category A

Prior to this notice, acceptable computer science degrees under Category A must have been accredited by the Computer Science Accreditation Commission of the Computing Sciences Accreditation Board or by the Computing Accreditation Commission of the ABET on or before the date the degree was awarded. As of the publication of this notice, this criterion will be changed so that all Bachelor of Science degrees in computer science from accredited colleges and universities will be accepted under Category A, regardless of whether the degree program is accredited by the ABET. An overwhelming majority of those who commented on this proposal were in favor of this change, as they thought ABET accreditation did not convey a perceivable benefit.

Update 3: Provide Clarifying Instructions in the GRB for Limited Recognition Applicants

The USPTO requested input on whether the instructions below should be added to the GRB to aid limited recognition applicants in applying for recognition. Based on the support of commenters, these instructions will be placed in the GRB. These instructions will not change the process by which applicants for limited recognition apply for recognition. One commenter suggested that instructions be given for each immigration status or visa category; however, the ever-changing landscape of immigration prohibits such an exhaustive list. The instructions below are to be inserted under Section F of the GRB.

F. ELIGIBILITY OF ALIENS: No grant of registration except under 37 CFR §11.6(c). An applicant who is not a United States citizen and does not reside in the U.S. is not eligible for registration except as

permitted by 37 CFR § 11.6(c). Presently, the Canadian Intellectual Property Office is the only patent office recognized as allowing substantially reciprocal privileges to those admitted to practice before the USPTO. The registration examination is not administered to aliens who do not reside in the United States.

Limited recognition to practice before the Office in patent matters. An

alien residing in the United States may apply for limited recognition to practice before the Office in patent matters pursuant to 37 CFR § 11.9(b).

To be admitted to take the examination, an applicant must fulfill the requirements as stated above and 37 CFR § 11.9(b), which includes that establishing that such recognition is consistent with the capacity of employment authorized by United States immigration authorities, for example the United States Citizenship and Immigration Services (USCIS), United States Department of State, U.S. Customs and Border Patrol, and the U.S. Department of Labor. The evidence establishing such consistency must demonstrate: (1) the applicant's authorization to reside in the United States, and (2) the applicant's authorization to work or be trained in the United States. It must include a copy of both sides of any work or training authorization and copies of all documents submitted to and received from the immigration authorities regarding admission to the United States, and a copy of any documentation submitted to the U.S. Department of Labor. This may include a complete copy of the application for a particular immigration status, the application for a work or training permit, and/or any related approved notices.

Qualifying documentation should specifically show that the immigration authorities have authorized the applicant to be employed or trained in the capacity of representing patent applicants before the USPTO by preparing and prosecuting their patent applications. Any approval that is pending at the time the application is submitted will result in the applicant being denied admission to the examination.

A qualifying alien within the scope of 8 CFR § 274a.12(b) or (c) is not registered upon passing the examination. Therefore, such qualifying aliens will not be patent attorneys or patent agents. Rather, such an applicant will be given limited recognition under 37 CFR § 11.9(b) if recognition is consistent with the capacity of employment or training authorized by immigration authorities. Documentation establishing an applicant's qualification to receive limited recognition must be submitted with the applicant's application.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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